

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendments to Part 4 of the Commission's)	PS Docket No. 15-80
Rules Concerning Disruptions to)	
Communications)	
)	ET Docket No. 04-35
New Part 4 of the Commission's Rules)	
Concerning Disruptions to Communications)	
)	PS Docket No. 11-82
The Proposed Extension of Part 4 of the)	
Commission's Rules Regarding Outage)	
Reporting to Interconnected Voice Over)	
Internet Protocol Service Providers and)	
Broadband Internet Service Providers)	

COMMENTS OF COMTECH TELECOMMUNICATIONS CORP.

Comtech Telecommunications Corp. (Comtech) (formerly TeleCommunication Systems, Inc.)¹ hereby submits its comments to the Federal Communications Commission (FCC or Commission) in response to *Further Notice of Proposed Rulemaking (FNPRM)*, in the above referenced dockets.²

¹ On February 23, 2016 Comtech Telecommunications Corp. (symbol CMTL) purchased 100% of the stock of TeleCommunication Systems, Inc. (TCS) (symbol TSYS). When referencing Comtech, we also include the historic filings and positions of TCS.

² *In the Matter of Amendments to Part 4 of the Commission's Rules Concerning Disruptions to Communications (PS Docket No. 15-80) New Part 4 of the Commission's Rules Concerning Disruptions to Communications (ET Docket No. 04-35) The Proposed Extension of Part 4 of the Commission's Rules Regarding Outage Reporting to Interconnected Voice Over Internet Protocol Service Providers and Broadband Internet Service Providers (PS Docket No. 11-82)* (FCC 16-63) Released May 26, 2016
<https://www.fcc.gov/ecfs/filing/60001957891/document/60002063617>

I. Background

Comtech's experience in Enhanced 9-1-1 (E9-1-1) began when it pioneered the first U.S. wireless E9-1-1 solution in 1997, through deployments of some of the first true Next Generation 9-1-1 (NG9-1-1) systems in Iowa, Texas, and Tennessee, and continues with the recent announcement of an ESInet deployment for Washington state.³ Today, Comtech supports approximately half of all U.S. wireless and nomadic Voice over Internet Protocol (VoIP) E9-1-1 calls. Its award-winning wireline, wireless, and VoIP E9-1-1 products, together with its E9-1-1 solutions, serve more than 140 million wireless and IP-enabled devices. As the only non-carrier TL 9000-certified company that supports E9-1-1 services, Comtech also provides location infrastructure for both emergency (E9-1-1) and commercial location solutions, making Comtech a national expert in location technology.

II. General Support of ATIS Comments

The Alliance for Telecommunications Industry Solutions (ATIS) is a global standards development and technical planning organization. Comtech is privileged to be a member of ATIS and supports ATIS's Comments. However, because of Comtech's historic position as a bellwether public safety provider, we have emphasized and/or augmented some positions below.

In the occasional instance that Comtech's Comments may differ from ATIS's Comments, this difference is not necessarily disagreement. ATIS operates by consensus and thus may not always be able to provide a unified position on narrow policy or regulatory issues. Whenever possible, Comtech hopes the Commission will view Comtech's and ATIS's Comments as complementary and reflective of the rich diversity of today's vendor-driven competitive public safety services landscape.

³ <http://www.comtechtel.com/releasedetail.cfm?ReleaseID=980381>

III. Comtech Comments

a. The Commission Fails To Provide Sufficient Economic, Technological, Social, Regulatory, Or Public Safety Justification For Its Proposals

Comtech's central role in the provision and management of critical public safety / 9-1-1 services provides a unique perspective on the issues presented in the FNPRM. We incorporate by reference our March 23, 2015 Initial Comments (Initial Comments) in PS Docket No. 14-193 and PS Docket No. 13-75.⁴ These Initial Comments reiterate how there has always been insufficient justification (scientific, economic, or otherwise) for the Commission's outage reporting requirements, and how they impose significant costs on the industry without reciprocal equivalent technological, social, or reliability value to the public safety community.

Unfortunately, those same shortcomings are present in the FNPRM. Rather than clarify long-standing questions (e.g., such as the "demarcation point" question raised in the Initial Comments), the Commission continues to overlay tedious and confusing analog micro-regulations on an evolving digital system. It would be infinitely better for everyone if the FCC put its energy and resources into accelerating the national transition to NG9-1-1. When the nation has ubiquitous end-to-end NG9-1-1 services, the benefits of voluntary simple nationally uniform outage reporting rules would be apparent and beneficial to all parties.

b. The NORS Reports Schedule Should Be Modified To Reflect Modern Technology and Reduce Reporting Burdens

ATIS makes several common sense suggestions for changes to the NORS reporting rules. These same arguments ring so true across all providers that Comtech can even refer the

⁴ Initial Comments of TeleCommunication Systems, Inc. Concerning FCC Promotion of a National Governance Structure for 9-1-1, filed March 23, 2015, *In the Matters of 9-1-1 Governance and Accountability (PS Docket No. 14-193) Improving 9-1-1 Reliability (PS Docket No. 13-75)*. <https://ecfsapi.fcc.gov/file/60001041194.pdf>

Commission to the positions embodied in the Comments of its major competitor, West Safety Services (formerly Intrado).⁵ In summary, at a minimum, the FCC should:

- 1) Eliminate the Notification (first report of an incident)
- 2) Modify the Initial Report to 3-business days from 72 hours

These changes would have NO material impact on the Commission's outage reporting mission, would significantly increase the quality for reporting, and greatly reduce costs.

**c. The Commission's Proposals in the FNPRM Should Be Replaced With
Collaboration and Industry Best Practices**

Consistent with existing law, the FCC should cease creating 9-1-1 outage reporting policies in the abstract and return to collaboration and consensus-based forums to develop and finalize voluntary best practices for providing public safety grade NG9-1-1 services, including examining overall monitoring, reliability, notifications, and accountability in NG9-1-1 environments, which should be accomplished in an appropriate and timely manner. The focus of this collaborative effort would be to develop and implement processes in the evolving NG9-1-1 environment to: (1) *Identify* risks that could result in disruptions to 9-1-1 service; (2) *Protect* against such risks; (3) *Detect* future 9-1-1 outages; (4) *Respond* to such outages with remedial actions, including notification to affected 9-1-1 authorities, and (5) *Recover* from such outages on a timely basis in cooperation with any affected Originating Service Providers and 9-1-1 Service Providers, and subcontractors.

Recognizing that the implementation of best practices may obviate the need for additional rules beyond those already adopted, the consensus-based process would, only if needed, recommend any rule changes believed to be necessary to reflect the emerging NG9-1-1

⁵*In the Matter of Amendments to Part 4 of the Commission's Rules Concerning Disruptions to Communications (PS Docket No. 15-80) New Part 4 of the Commission's Rules Concerning Disruptions to Communications (ET Docket No. 04-35)* Reply Comments of Intrado at p. 11 (July 31, 2015) <https://ecfsapi.fcc.gov/file/60001119700.pdf>

environment. These recommendations should be consistent with the overarching goals of encouraging innovation and investment in NG9-1-1 and avoiding duplicative regulatory requirements. As with all best practices, the collaborative work of this consensus body should also be flexible to account for differences in the financial and personnel resources available to individual PSAPs, state and local governments, and 9-1-1 Covered Service Providers and vendors, as well as differences in the legal and governance environments in which 9-1-1 services are provided.

d. The Sharing of NORS Data With State Commissions Is Inappropriate

The Commission proposes to provide states with read-only access to portions of the NORS database that pertain to communications outages in their respective states. Comtech concurs in ATIS's cautions regarding a data sharing program and offers additional arguments against such a program at this time.

First, such access may be a violation of fundamental federal rights. Based on specific state licensing and authority, State Public Service Commissions (PSC) routinely receive information from regulated entities operating in their jurisdictions, and many states have outage reporting rules. A sharing program should not provide PSCs with information from entities required to report on a federal level (e.g., Originating Service Providers) (OSPs) that are not similarly regulated by the PSCs. That would be a violation of the OSP's fundamental rights as it would for any entity similarly situated.

Second, NORS is not designed for state use. While NORS is constantly being refined and improved (as in the FNPRM), it was not designed for non-FCC use and is not currently organized so that state specific data could be easily available. For example, the drop-down menu in the NORS form only contains one field for the state location of an event, and if the event

impacts multiple states, the forced list choice is “multi-state.” The database would require a complete rebuild to make it state specific.

Lastly, there is no justification, legal or otherwise, and no anticipation by reporting parties, for historic data to be accessible to states; thus, state access to NORS, if permitted, would only be on a going-forward basis from a future date certain. Reporting entities would need to populate new or reformatted NORS fields correctly and reports would need to be submitting with the understanding that states would have access.

e. The Commission Must Address the Threat to 9-1-1 Reliability Resulting from Patent Lawsuits

While Comtech acknowledges the critical importance of 9-1-1 services, it again respectfully reminds the Commission that the FCC is overlooking the ever growing danger of the public suffering disruption of current 9-1-1 and E9-1-1 services, and the clear potential for delay or loss of NG9-1-1 services, due to infringement lawsuits filed mostly by patent assertion entities (“PAEs”). These PAEs seek to enforce their claims by asserting that deployment of the capabilities (including technologies, systems, and methodologies) necessary to provide 9-1-1 and E9-1-1 services (and very soon NG9-1-1 services) in compliance with FCC orders, regulations, or standards is the proximate cause of alleged infringement.⁶

Moreover, the problem will worsen as the Commission (as in the FNPRM) creates even more mandates and requirements (the PAEs’ *raison d’etre*) as the industry moves toward the implementation of NG9-1-1 because of the large number of internet-based patents which PAEs will be able to draw upon in order to initiate frivolous patent enforcement actions.

Consequently, Comtech believes that the Commission must address this threat and grant

⁶ See generally *Petition of TeleCommunication Systems, Inc. for Declaratory Ruling and/or Rulemaking*, GN Docket No. 11-117 etc. (July 24, 2012). <https://ecfsapi.fcc.gov/file/7021992394.pdf>

Comtech' request of the Commission to provide interpretive guidance as to the application of 28 U.S.C. § 1498 with regard to the Commission's E9-1-1 and proposed NG9-1-1 regulations, by making a clear and simple **policy statement that a carrier, 9-1-1 covered service provider, or other vendor providing 9-1-1, E9-1-1, NG9-1-1, or similar services is doing so "by or for the government" and "with the consent" of the government** (emphasis added).

A Commission policy statement is both appropriate and necessary because the FCC has prescribed by regulation the 9-1-1 and E9-1-1 requirements upon which the infringement claims are based and has required that carriers, their vendors, and 9-1-1 covered service providers adhere to them. Furthermore, guidance is in the public interest because it will better enable companies subject to the Commission's regulations to determine the risk associated with entering and/or remaining in the 9-1-1, E9-1-1, and NG9-1-1 markets, and perhaps more importantly, it will help to remove the threat of injunctions which could force these entities to stop providing the capabilities necessary for the continuing provision of 9-1-1 emergency services. As the Commission considers the FNPRM or any governance action with the intent of better protecting the 9-1-1 infrastructure, Comtech suggests that the Commission has a similar opportunity and responsibility to remove the 9-1-1 infrastructure's vulnerability to frivolous patent litigation.

IV. Conclusion

The telecommunications industry is a competitive landscape. Congress, the Courts, and even most of the FCC's regulations support this fact – except, as to public safety. Here, the Commission often acts as though a monopoly environment still exists and should be regulated as such, to the exclusion of state and local input or responsibility. While Comtech acknowledges that 9-1-1 / public safety is special, the FCC's punctuated assault on the industry with a continuous series of "whack-a-mole" regulatory proposals lacking even the semblance of

technical, economic, or legal justification only, at best, highlights the Commission's isolation and, at worst, steers the FCC from the important and unique role it should play in fostering industry collaboration and robust best practices. Unjustified and ill-conceived regulations drain the life blood from the industry, at a time when every iota of intellectual power and financial resources are needed to maintain current services, and facilitate the national transition to universal NG9-1-1.

Respectfully submitted,

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